## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

DAVID STEBBINS,	)
Plaintiff,	)
v.	) Case No. 10-3305-CV-S-RED
RELIABLE HEAT & AIR, LLC, et al.,	)
Defendants.	)

## **ORDER**

Before the Court is Plaintiff's Motion to Reconsider Adverse Grant of Summary Judgment (Doc. 154) wherein Plaintiff argues that the Court failed to consider a material issue that was in dispute, the nature of Defendant's contracts with their customers. However, Plaintiff has not set forth any evidence which illustrates that the nature of Defendant's contracts with their customers was in dispute and, further, that this dispute indicates that customer satisfaction is not an essential element of Plaintiff's former job.

In support of his argument, Plaintiff points to discovery requests that this Court has previously denied. Fed. R. Civ. P. 56(c)(1)(A) sets forth the evidence that may be considered when ruling on a motion for summary judgment; this evidence includes: depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers or other materials. Rule 56 does not list denied discovery requests as evidence that may be considered when ruling on a motion for summary judgment and, moreover, Plaintiff's denied discovery request does not set forth any information, other than Plaintiff's theory of the case, and, thus, is not evidence that this Court was required to consider when ruling on Defendants' motion for summary judgment.

WHEREFORE, Plaintiff's motion contains no new issues which warrant reconsideration of the Court's order; thus, Plaintiff's motion is **DENIED**.

## IT IS SO ORDERED.

DATED: November 10, 2011 /s/ Richard E. Dorr

RICHARD E. DORR, JUDGE UNITED STATES DISTRICT COURT